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Filing date: **04/18/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044697
Party	Plaintiff ACM Enterprises, Inc.
Correspondence Address	David Hong Law Office of David Hong P.O. Box 2111 Santa Clarita, CA 91386-2111 UNITED STATES david.hong@dhpatentlaw.com, david_hong@sbcglobal.net
Submission	Opposition/Response to Motion
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Signature	/david hong, esq./
Date	04/18/2009
Attachments	2009-04-18_opp_msj_acm_martello.pdf (2 pages)(15243 bytes) 2009-04-18_decl_DH_opp_martello_MSJ.pdf (3 pages)(232264 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc., Petitioner,
- against -
Martello, Jeannette, M.D., Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

**Petitioner's Opposition to Motion for Summary Judgment and Amendment of
the Pleadings**

1. Respondent's Motions for Summary Judgment and for Amendment of the Pleadings
are not germane to the pending discovery motion.

This case is currently under suspension during the pending Feb. 14, 2009 Motion to Compel Discovery pursuant to the Feb. 20, 2009 TTAB Order, which states:

“[p]roceedings herein are suspended pending disposition of the motion to compel, except as discussed below. The parties should not file any paper which is not germane to the motion to compel. See Trademark Rule 2.120(e)(2).”

Respondent's March 21, 2009, March 25, 2009, and April 8, 2009 motions completely fail to address the pertinent discovery issues. *See* Item No. 49, 51 and 52 on the Prosecution History List for this Cancellation No. 92044697.

Respondent attempts to raise allegations of standing, bad faith, and delay, among others in the motions for summary judgment, which are all not germane to the outstanding discovery issues. Respondent's motions should be denied.

Petitioner's attorney David Hong, Esq. also wishes to thank TTAB Attorney Ann Linnehan for returning his telephone call to clarify that only germane papers were to be considered in light of the Feb. 20, 2009 TTAB Order.

2. Respondent failed to serve a copy of the motions upon Petitioner's counsel.

TBMP 113 and 37 CFR 2.119 require that every paper filed in the Patent and Trademark Office in inter parties cases must be served upon the other parties.

TBMP 113.02 states "[w]hen a party to an inter parties proceeding before the Board files a document required by 37 CFR § 2.119(a), to be served upon every other party to the proceeding, proof that the required service has been made ordinarily must be submitted before the filing will be considered by the Board."

Petitioner's attorney has not received a service copy of the Respondent's Motions for Summary Judgment and Amendment of the Pleadings. Only after checking the TTAB VUE website for this cancellation proceeding was Petitioner's counsel aware of Respondent's improper filings. Without waiving any objections or defenses, Petitioner reserves the right to respond to all allegations raised by Respondent in these motions and requests the Board to deny the Respondent's motions.

DATED: April 18, 2009

By: /david hong, esq/
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner, ACM Enterp., Inc.

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following documents:
1. Petitioner's Opposition to Motion for Summary Judgment and Amendment of the Pleadings (2 pages);
2. Declaration of David Hong in Support of Petitioner's Opposition to Motions for Summary Judgment and Amendment of the Pleadings (1 page) and Exhibits (2 pages), were sent by first class U.S. Mail on April 18, 2009, in an envelope addressed to: Dr. Jeannette Martello, M.D., 701 Fremont Avenue, South Pasadena, CA 91030.

By: /david hong/
David Hong, Reg. No. 45,704

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

**Declaration of David Hong in Support of Petitioner's Opposition to Motions for
Summary Judgment and Amendment of the Pleadings**

1. My name is David Hong, Esq., and I am the Attorney for the Petitioner ACM ENTERPRISES, INC. My business address is P.O. Box 2111, Santa Clarita, CA 91386-2111. I am fully competent to make this declaration, and I have personal knowledge of the facts stated in this declaration. To my knowledge, all of the facts stated in this declaration are true and correct.

2. As of this April 18, 2009 opposition filing, I have not received a service copy of the Respondent's March 21, 2009, March 25, 2009 or April 8, 2009 Motions for Summary Judgment and for Amendment of the Pleadings.

3. On April 17, 2009, I checked the Prosecution History Page at the USPTO TTABVUE website for Cancellation No.: 92044697, which lists Items No. 49, 51 and 52 as D's Motion for Summary Judgment, which is attached as an exhibit to this declaration. I declare under penalty of perjury (28 U.S.C. 1746) that the foregoing is true and correct.

Dated: April 18, 2009 /david hong, reg #45704/

David Hong, Esq., #45704, Attorney for Petitioner

**United States Patent and Trademark Office**

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**TTABVUE. Trademark Trial and Appeal Board Inquiry System****v1.4****Cancellation****Number:** 92044697**Filing Date:** 07/01/2005**Status:** Pending**Status Date:** 07/06/2005**Interlocutory Attorney:** [ANN LINNEHAN](#)**Defendant****Name:** [Jeannette Martello](#)**Correspondence:** [Jeannette Martello](#)

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Serial #: [76581387](#) [Application File](#)**Registration #:** [2932593](#)**Application Status:** Cancellation Pending**Mark:** "SKIN DEEP"**Plaintiff****Name:** [ACM Enterprises, Inc.](#)**Correspondence:** [David Hong](#)

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Prosecution History

#	Date	History Text	Due Date
52	04/08/2009	D'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR AMENDMENT OF THE PLEADINGS	
51	03/25/2009	D'S MOTION FOR SUMMARY JUDGMENT	
50	03/26/2009	P'S REPLY IN SUPPORT OF MOTION	
49	03/21/2009	D'S MOTION FOR SUMMARY JUDGMENT	
48	03/24/2009	D'S OPPOSITION/RESPONSE TO MOTION	
47	03/24/2009	D'S OPPOSITION/RESPONSE TO MOTION	
46	03/06/2009	D'S OPPOSITION/RESPONSE TO MOTION	
45	03/09/2009	D'S OPPOSITION TO MOTION TO COMPEL MOTION FOR PROTECTIVE ORDER AND MOTION TO STAY DISCOVERY	
44	03/06/2009	EXHIBITS FOR D'S OPP TO MOTION TO COMPEL	
43	03/06/2009	D'S OPPOSITION/RESPONSE TO MOTION	
42	03/06/2009	EXHIBITS TO D'S OPP TO MOTION TO COMPEL	
41	02/20/2009	SUSPENDED PENDING DISP OF OUTSTNDNG MOT	
40	02/14/2009	P'S MOTION TO COMPEL DISCOVERY	
39	09/17/2008	SUSPENDED	
38	09/11/2008	STIPULATION FOR AN EXTENSION OF TIME	
37	08/05/2008	CHANGE OF CORRESPONDENCE ADDRESS	
36	04/14/2008	SUSPENDED	

[35](#) 02/08/2008 [P'S MOT TO SUSP PEND SETLMT NEGOTIATIONS](#)

[34](#) 02/04/2008 [STIPULATION FOR AN EXTENSION OF TIME](#)

[33](#) 12/07/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[32](#) 11/29/2007 [PL'S MOT. FOR SUMM. JUDGMENT DENIED](#)

[31](#) 09/24/2007 [P'S REPLY IN SUPPORT OF MOTION](#)

[30](#) 09/07/2007 [D'S OPPOSITION TO MOTION TO AMEND AND MOTION FOR SUMMARY JUDGMENT](#)

[29](#) 08/24/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[28](#) 08/03/2007 [EXHIBITS IN SUPPORT OF P'S MOTION FOR SUMMARY JUDGMENT](#)

[27](#) 08/07/2007 [SUSPENDED PENDING DISP OF OUTSTNDNG MOT](#)

[26](#) 08/03/2007 [P'S MOTION FOR SUMMARY JUDGMENT](#)

[25](#) 06/30/2007 [EXTENSION OF TIME GRANTED](#)

[24](#) 06/30/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[23](#) 05/31/2007 [EXTENSION OF TIME GRANTED](#)

[22](#) 05/31/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[21](#) 05/22/2007 [ACKNOWLEDGMENT OF PROTECTING CONFIDENTIALITY OF INFORMATION](#)

[20](#) 05/04/2007 [EXTENSION OF TIME GRANTED](#)

[19](#) 05/04/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[18](#) 04/04/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[17](#) 03/31/2007 [EXTENSION OF TIME GRANTED](#)

[16](#) 03/01/2007 [STIPULATION FOR AN EXTENSION OF TIME](#)

[15](#) 12/27/2006 [PETITIONER'S ACKNOWLEDGEMENT OF PROT AGREEMENT](#)

[14](#) 11/28/2006 [PETITIONER'S MOTION TO COMPEL IS DENIED TRIAL DATES ARE RESET AS FOLLOWS](#)

[13](#) 05/20/2006 [P'S REPLY IN SUPPORT OF MOTION](#)

[12](#) 05/08/2006 [D'S OPPOSITION/RESPONSE TO MOTION](#)

[11](#) 05/05/2006 [P'S RESPONSE TO BOARD ORDER/INQUIRY](#)

[10](#) 04/26/2006 [SUSPENDED](#)

[9](#) 04/21/2006 [P'S MOTION TO COMPEL DISCOVERY](#)

[8](#) 12/30/2005 [EXTENSION OF TIME GRANTED](#)

[7](#) 12/22/2005 [STIPULATION FOR AN EXTENSION OF TIME](#)

[6](#) 12/22/2005 [CHANGE OF CORRESPONDENCE ADDRESS](#)

[5](#) 12/20/2005 [CHANGE OF CORRESPONDENCE ADDRESS](#)

[4](#) 08/29/2005 [ANSWER](#)

[3](#) 07/06/2005 PENDING, INSTITUTED

[2](#) 07/06/2005 [NOTICE AND TRIAL DATES SENT; ANSWER DUE:](#) 08/15/2005

[1](#) 07/01/2005 [FILED AND FEE](#)

Results as of 04/17/2009 06:47 PM [Back to search results](#)Search: [HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)